

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2082 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

-----  
MANGUBHAI RAMSINGBHAI VASAVA

Versus

DISTRICT MAGISTRATE

-----  
Appearance:

MS DR KACHHAVAH for Petitioner

MR HL JANI, AGP, for the Respondents.

-----  
CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 03/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 19-1-98 passed by the District Magistrate, Bharuch, under Section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ( hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on three prohibition cases registered against the petitioner and which are pending before the competent Court. Over and above these three prohibition cases, further reliance is also placed on the statements of three witnesses for the incidents which took place on some days prior to the recording of the statements of the witnesses wherein the concerned witnesses were beaten on the ground that they were preventing the customers of the petitioners from purchasing liquor from the petitioner or that they were threatening the associates of the petitioner or that the concerned witnesses were instrumental in launching the police raids on the business activities of the petitioner. On all these occasions many people gathered to watch the incidents of beating. However, they ran away helter-skelter when the petitioner rushed towards them with open knife and an atmosphere of fear and terror was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a boot-legger within the meaning of Section 2(d) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 19-1-98 is quashed and set aside. The detenu Mangubhai Raisingbhai Vasava is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

\*\*\*\*\*

Verified copy